

TOWARDS EFFECTIVE GOVERNANCE IN THE STATE SECTOR

PRESENTATION BY THE HONOURABLE ATTORNEY GENERAL

ON

“ISSUES OF TRANSPARENCY FOR THE STATE ENTERPRISE SECTOR”

*Meeting of Chairmen, Boards of Directors and CEO's of State Enterprises
December 04, 2002*

1. Salutations.
2. Accountability, transparency and morality in public affairs are the essential tenets of good governance. They are vital to the rule of law and crucially important to the democratic process. The importance of establishing and maintaining high standards of conduct in public life can never be overemphasised, as both nationally and internationally there are now stringent demands for transparency in all government affairs. The impact of globalisation has led to the world economy being increasingly integrated through an accelerated pace of trade and investment. This has had profound and far-reaching changes for the Caribbean region. To cope with these challenges small states now have to ensure a proper framework for administrative and financial transparency to promote investor confidence.
3. Simply put, accountability is the obligation to render an account for a responsibility that has been conferred. Transparency on the other hand calls for the unobstructed access to information that is accurate, timely, relevant

and comprehensive. In the late 19th and 20th centuries morality and ethics were viewed as incompatible with the business of making profits and state patronage was the order of the day. In today's global economy, with the involvement of international lending agencies, trade organisations and foreign investors in our economies, it is imperative for state agencies to ensure morality and integrity in the conduct of business.

4. State enterprises, as defined by section 119(9) of the Constitution have been entrusted with significant pools of government resources. As managers and directors of these various enterprises there is a clear and continuous role for you to play in strengthening ethics and improving corporate governance in the state sector. Whilst some measure of accountability and internal control is assured through the Exchequer and Audit Act and its accompanying Financial Regulations, there are three important pieces of legislation aimed at enhancing transparency in government affairs. The Freedom of Information Act, in giving members of the public the statutory right to access official information held by public authorities would no doubt promote a cultural change, from one of hoarding information, to one of open sharing of information. This would result in a more informed public, promote greater equity and allow for participation and openness in policy making. It would be a profound weapon in combating corruption and nepotism. This notwithstanding, unless a proper and dedicated system for accessing such information is put in place, the resources of government departments can be severely challenged by being inundated with requests for information. This is therefore an area in which the Freedom of Information Act is in urgent need of some re-engineering and the Government is proceeding apace with this exercise. The Integrity in

Public Life Act also introduces a number of mechanisms, which would allow for control and oversight over the financial affairs of persons performing governmental functions. Apart from the requirement of a declaration of family assets, it places the onus on persons in public life to explain any sudden accretion of wealth, which is not commensurate with income earned and for which no proper explanation can be offered. This too is an area of the law, which needs some serious amending. The legal mechanism for the prevention of corruption in Trinidad and Tobago is founded on two main pieces of legislation, namely The Prevention of Corruption Act (11 of 1987) and the Integrity in Public Life Act (83 of 2000), neither of which is adequately serving the purpose. Government is therefore undertaking a comprehensive overhaul of these two pieces of legislation and is looking at establishing an Independent Commission Against Corruption, which will be invested with the necessary teeth and resources to deal effectively with corruption at all levels of the society. It is envisaged that the proposed Commission will adopt a three-pronged approach to corruption – investigation, prevention and education. Our recent experiences in the fight against corruption have shown the present legislation is woefully inadequate and has blunted the effect of the investigative efforts of the authorities. The Constitution (Amendment) (Parliamentary Committees) Act empowers Parliament to appoint Joint Select Committees to enquire into and report on the administration and the manner of the exercise of powers and methods of functioning of and the criteria adopted in the exercise of such powers by Ministries, Corporations, Statutory Authorities and State owned enterprises. Parliament is given the opportunity to investigate the operations of any state entity and to monitor on a continuous basis any misuse or abuse of power in the state sector.

The above are just some of the measures adopted to ensure accountability and transparency. However, Ladies and Gentlemen, not every aspect of management can be susceptible to legislation. It may not be desirable to do so, as over-regulation would detract from the flexibility, which state enterprises enjoy in the market economy. Transparency demands that every public act be done in an open manner and the actions of every person performing a public function be seen to be above board. You will be held to higher standards of conduct than your counterparts in the private sector as you are directly involved in undertakings and investments which involve the use of state resources and the disbursement of public monies. Your stakeholders are the citizens of Trinidad and Tobago and any corrupt or clandestine practices within your enterprise would have an adverse effect on the economic life of the country. Corruption tends to increase the cost of goods and services, promote unproductive investments that are not economically viable or sustainable and eventually increases the indebtedness of the government. The excesses of the last regime in their handling of the Piarco Airport Development Project provide ample testimony in support of this proposition. For, we have paid three times what this project should have cost and we are further saddled with a huge debt-repayment over the next several years. Greater transparency in public sector management would serve to reduce the potential for the diversion of state resources.

5. If the public interests are to be protected then every state agency is obliged to ensure adequate and open consultation in the conduct of their affairs. Transparency requires that procedures be put in place for the dissemination of information relating to contracts, projects and proposals,

the publication of diverging positions, the release of information relating to bidding procedures and contract compliance, adequate advertisement on openings and promotions and generally making documents and information available. I would advise that State enterprises include these procedures in their administrative guidelines.

6. We are well aware that the one area of activity most prone to corruption is the procurement process. I would urge that entities not bound by the Central Tenders Board Ordinance review, as a matter of priority, their internal procurement procedures. Lax and undisclosed procedures create an environment, which fosters bribery and favouritism, and even if it does not actually occur, there is the public perception of unfair practices and procedures.

Recently the World Bank outlined a number of criteria for improving procurement in the state sector.

- i. *Firstly, procurement whether it be for goods or services should be economical. This means we should strive to attain the best quality for the price paid.*
- ii. *Secondly, the award of contracts should be fair and impartial. Public funds should not be used to provide favours and suppliers and contractors should at all times be selected on the basis of their qualifications, expertise and track record. Moreover, all bidders should receive equal treatment in terms of deadlines and confidentiality.*
- iii. *Thirdly, for the entire process to be transparent, rules and administrative procedures should be readily*

accessible to all and should be advertised as part of the invitation bid. Transparency also requires that these procedures are systematic and dependable.

- iv. Lastly, records and accounts should be maintained at levels which would guarantee that the decision making process can be easily explained and justified.*

7. Both the World Bank and the World Trade Organisation have been stressing the need for greater transparency in public affairs through enhanced public knowledge of government actions and access to accurate economic data. As mentioned before, the legislative framework to promote access to information is already in place in Trinidad and Tobago. While our Constitution does not directly proclaim the right of citizens to government information, other rights cannot be properly honoured and exercised if they have no access to records and documents. This is an area where the Freedom of Information Act has made it possible for Citizen Junior to gain access to information almost instantaneously.

8. Conflict of interests is another factor, which has serious implications for accountability and transparency. Conflict of personal and public interest has a direct impact on probity and standards of individual conduct. Such a phenomenon occurs worldwide and many governments have sought to address it by embarking on corrective measures such as the creation of a special Conflict of Interests Ombudsman as has been done in Canada and the establishment of Ethics Committees in the United States. These innovations have not necessarily been very effective, particularly if they are not backed by stringent enforcement. A conflict of interest may be created simply by

being a public official and at the same time holding office as a member of the board of a charitable organisation.

9. If we were to trace the development of anti corruption mechanisms in the more developed countries, it would be seen that the parameters of corrupt activity has been continuously expanding. Previously, corruption was understood to embrace only certain types of behaviour such as the taking of bribes. Today, all private gain from public office is deemed unethical as it undermines the public's confidence in the integrity of government. Interestingly enough, the scope of corruption now includes the mere placing of oneself in a position in which a conflict of interest could arise. The exploitation of public office for private gain and the taking of decisions without a declaration of one's interest are now considered as corrupt activity. In Canada, there are specific laws dealing only with conflict of interest and requiring the disclosure of personal investments to prevent government officials from having the decision making process distorted by the potential for personal gain.

10. In Trinidad and Tobago financial disclosure under the Integrity in Public Life Act is meant to avoid conflict of interest situations from arising. As you may be aware, the revised legislation now extends the requirement for financial declarations to include members of the Boards of all Statutory Bodies and State Enterprises. It is hoped that the disclosure of assets and interests to the Integrity Commission will deter public officials from placing themselves in such situations and force them to focus on organising their financial affairs to avoid any possible conflict between their private interest and the discharge of their public duties. Under the Act a conflict of interest

is deemed to arise where a person in public life or any person exercising a public function makes or participates in the making of a decision in the execution of his office and at the same time knows or ought reasonably to have known that in the making of the decision there is opportunity either directly or indirectly to further his private interest or that of his family or any other person. In such a situation the legislation calls upon public officials to disclose their interests in accordance with prescribed procedures and disqualify themselves from the decision making process.

11. Ladies and gentlemen, safeguarding integrity is not only a matter of enacting laws, it requires changes in attitudes and in long standing practices. To bring integrity and transparency to government appropriate conduct must be reinforced at all levels. Corruption often grows in the absence of a well-defined work ethic or in the absence of an understanding of the concepts of accountability and transparency. Integrity can develop if there are codes of conduct, which spell out what amounts to proper and improper behaviour. Codes tend to create an ethical environment in both public and private organisations. They also provide avenues for improving corporate governance. Although integrity legislation now includes a general code for all public officials this does not obviate the need for each state enterprise to promulgate its own internal standards of behaviour and require strict adherence to these standards. The fact, Ladies and Gentlemen, is that standards and ethics cannot be forced upon persons performing public functions. These are values, which must be inculcated into the psyche of every person involved in policy making and management and must become an integral part of the corporate mores. It is for the government and the people to ensure that only those who maintain high standards of ethical

conduct retain positions of authority. That is not to say that regulatory systems are not important. Indeed, codes now form a major part of the corporate landscape in all developed countries, but my personal view is that such a measure is limited in its effectiveness because of man's ingenuity to circumvent laws and institutions. Hence the emphasis on inculcated values.

12. In conclusion, let me say that the highest possible degree of transparency is essential in the war against corruption. This government demands of persons in public life strict adherence the highest standards of ethics and morality in the discharge of their functions. Our aim is to rebuild public confidence by ensuring that sufficient safeguards are put in place to monitor levels of transparency in every government agency. The past has shown that in the absence of transparency there is gross misuse of power and resources, which results in significant loss to the economy. Even if we cannot control the global economic forces we can make sure that our systems are open and fair so that we can all enjoy the benefits of good governance.